

2001 CCW Review Conference

Scope and Compliance

Presented to the Regional Meeting of the ICRC

Budapest/June 2001

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Topic of Presentation

Proposals to:

- Expand the scope of the Convention to govern non-international armed conflicts
- Add a compliance mechanism to the Amended Mines Protocol

I. Expansion of the CCW Scope

1. The Distinction Between International and Non-International Armed Conflicts
2. Does the Distinction Still Make Sense?
3. Recent Progress in Expanding the Scope of the Law of Armed Conflict
4. The U.S. Proposal

The Legal Distinction Between International and Non-International Armed Conflicts

1. The Geneva Conventions of 1949

- a. Common Article 2
- b. Common Article 3

2. The 1977 Additional Protocols

- a. Additional Protocol I
- b. Additional Protocol II

3. Article 1 of the CCW

The Four Geneva Conventions of 1949

Common article 2

“... the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties ...”

The Four Geneva Conventions of 1949

Common article 3

“In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions ...”

1977 Additional Protocol I

Article 1(3)

Additional Protocol I applies “in the situations referred to in Article 2 common” of the Geneva Conventions of 1949.

Article 1(4)

“The situations referred to . . . include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination ...”

1977 Additional Protocol II

Article 1(1)

“This Protocol . . . shall apply to all armed conflicts which are not covered by Article 1 of [Additional Protocol I] and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a party of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.”

1980 Convention on Conventional Weapons

Article 1

“This Convention and its annexed Protocols shall apply in the situations referred to in Article 2 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, including any situation described in paragraph 4 of Article 1 of Additional Protocol I to these Conventions.”

Does the Distinction Make Sense Today?

1. The Predominance of Internal Armed Conflicts
2. The Need for Legal Restraints on Non-State Belligerents in Internal Armed Conflict
3. The Fundamental Values Involved
4. The Credibility of the Law
5. Practicality, Feasibility and the Benefits for Training in the Law of Armed Conflict

Recent Trends Expansion of the Scope

1. The 1999 Second Protocol to the 1954 Hague Convention on the Protection of Cultural Property in Armed Conflict
2. The 1998 Rome Statute
3. The 1996 CCW Amended Mines Protocol

The 1999 Second Protocol to the 1954 Hague Convention on Cultural Property

Article 22(1)

“This Protocol shall apply in the event of an armed conflict not of an international character, occurring within the territory of one of the Parties.”

1998 Rome Statute

In addition to Article 8(c) concerning serious violations of common Article 3 of the Geneva Conventions, Article 8(e) provides ICC with jurisdiction over “other serious violations of the laws and customs applicable in armed conflicts not of an international character . . .” and enumerates such acts.

1996 Amended Mines Protocol

Article 1(2)

“This Protocol shall apply, in addition to situations referred to in Article 1 of this Convention, to situations referred to in Article 3 common to the Geneva Conventions of 12 August 1949.”

The U.S. Proposal

1. Substantively identical to the scope provisions of the Amended Mines Protocol
2. Amend Article 1 of the Convention itself
3. As amended, the Convention and its annexed Protocols would apply to both international and non-international armed conflict.

Text of U.S. Proposal

ARTICLE I: AMENDED ARTICLE I OF THE CONVENTION

The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects ("this Convention") is hereby amended. The text of Article I of the Convention as amended shall read as follows:

"Article I - Scope of Application

1. This Convention and its annexed Protocols shall apply in the situations referred to in Article 2 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, including any situation described in paragraph 4 of Article I of Additional Protocol I to these Conventions.
2. This Convention and its annexed Protocols shall also apply, in addition to situations referred to in paragraph I of this Article, to situations referred to in Article 3 common to the Geneva Conventions of 12 August 1949. This Convention and its annexed Protocols shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.
3. In case of armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply the prohibitions and restrictions of this Convention and its annexed Protocols.
4. Nothing in this Convention or its annexed Protocols shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the Government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.
5. Nothing in this Convention or its annexed Protocols shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs.
6. The application of the provisions of this Convention and its annexed Protocols to parties to a conflict, which are not High Contracting Parties that have accepted this Convention or its Protocols, shall not change their legal status or the legal status of a disputed territory, either explicitly or implicitly."

ARTICLE II: ENTRY INTO FORCE

This amendment shall enter into force as provided for in paragraph 1 of Article 8 of the Convention.

A Compliance Mechanism for the Amended Mines Protocol

1. Why a compliance mechanism?
2. What does compliance mean in the context of treaties in the law of armed conflict?
3. What does it mean to add a balanced and reasonable compliance mechanism to the Amended Mines Protocol?

Why a Compliance Mechanism?

1. Further enhancement of the humanitarian protections provided by the Protocol.
2. Provides an opportunity to air legitimate complaints.
3. Provides an opportunity to dispel unfounded complaints.

What does compliance mean in the context of treaties in the law of armed conflict?

1. Unlike arms control regimes.
2. The realistic recognition of special circumstances of armed conflicts.
2. The obligation to prosecute or extradite alleged violators.
3. The requirement of balance in investigations.

Existing Compliance Mechanisms

1. Prosecute or extradite provisions of the Geneva Conventions (e.g., Article 129 of the Third Geneva Convention)
2. International Fact-Finding Commission in Additional Protocol I (Article 90)
3. Amended Mines Protocol (Article 14)

Amended Mines Protocol

Article 14 (Compliance)

A modest set of obligations includes:

1. Prevention and suppression of violations.
2. Penal sanctions.
3. Appropriate training of military personnel.
4. Consultations.

What is a balanced and reasonable compliance mechanism?

1. An optional annex.
2. Only applicable to allegations concerning unlawful *use* of mines, booby-traps and other devices.
3. Specific, limited authority of inspection teams.
4. Procedural protections against the compromise of legitimate legal and military interests.

An Optional Annex

1. States declare their intention to be bound by the annex.
2. Only State Parties having made such declaration could ask for an inquiry.
3. Only such Parties would participate in inquiry and relevant recommendations.
4. Allegations could be brought only against Parties which declare an intent to be bound.

Applicable to Allegations of Unlawful Use

1. Not applicable to stockpiles.
2. Compare to the 1997 Ottawa Convention.

Authority and Composition of Inspection Teams

1. Specified equipment allowed.
2. Only members previously identified and designated.
3. No nationals of a requesting party.
4. 72 hours advance notice.
5. Limitation to two weeks on the ground.

Procedural Protections Against Compromise of Legal or Military Interests

Inspection teams subject to arrangements the Party concerned considers necessary to protect:

1. Sensitive equipment, information and areas unconnected with the inspection.
2. Any constitutional obligations the Party concerned may have with regard to proprietary rights, searches and seizures, and other constitutional protections.
3. The conduct of actual military operations.

Alternative Approach to CCW Compliance

- French delegation has proposed adoption of a compliance mechanism applicable to the CCW as a whole.
- United States put forward such a proposal for the original CCW in 1980.
- Delegations now considering such an approach.

Next Steps in the Review Process

1. Friend of the Chair for Scope and Compliance, India's Ambassador Sood, hosting July 3 meeting in Geneva.
2. August Intersessional.
3. September Preparatory Committee.
4. December Review Conference.